U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: TEGUCIGALPA, HONDURAS Date: OCT 27 2008

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Costa Rica. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year after April 1, 1997. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen spouse.

The record reflects that the applicant was admitted to the United States in B-2 status on July 9, 2002. The standard period of authorized stay for a B-2 visa is six months. The applicant remained in the United States beyond January 8, 2003 until departing voluntarily on July 28, 2005. The applicant married her spouse, in the United States on January 6, 2003. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her spouse. The applicant has filed an Application for Immigrant Visa (DS-230). The applicant filed an Application for Waiver of Grounds of Excludability (Form I-601) on or about August 31, 2005.

The OIC concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the waiver application accordingly. *Decision of OIC*, dated June 12, 2006.

On appeal, the applicant's mother-in-law[1] states that the applicant's spouse does not have the option to relocate to Costa Rica because he must complete five years of probation after being released from prison in March 2008. *Attachment to Form I-290B* at 3. She asserts that it is highly unlikely that he will be granted permission even to visit the applicant in Costa Rica because he is on probation and because he is in arrears on child support payments. *Id.* She further contends that the applicant's spouse will be unable to obtain residency from the Costa Rican authorities because of his criminal record. *Id.* at 2-3.

The applicant's mother-in-law states that the applicant's spouse suffers extreme hardship because of separation from the applicant and their son. *Attachment to Form I-290B* at 4. She asserts that the applicant's spouse suffers emotionally from not being able have a relationship with his son, who will be raised to speak Spanish and be unable to communicate with the applicant's spouse. *Id.* She also contends that the applicant's spouse suffers emotionally because the applicant is unable to continue her stepmother relationship with his daughter [redacted] *Id.* The applicant's mother-in-law observes that the applicant's spouse struggles with substance abuse and has Hepatitis C. *Id.* She states that his continued separation from the applicant, and his inability to meet the medical needs of his son, increases his anxiety and depression. *Id.* at 5. She contends that if the applicant is not permitted to return to the United States, the applicant's spouse's "susceptibility to stress-related illness will increase from moderate to significant, with a high risk of developing medical illness or injury within the next two years." *Id.* at 7. She further asserts that the applicant's spouse will suffer financial hardship if he must support two households in addition to meeting his child support obligations for [redacted]. *Id.* at 9-10.

[1] The applicant's spouse was incarcerated at the time the appeal was filed.

In support of the waiver application, the applicant has submitted several statements from her spouse; an employment letter for the applicant from Bridge Fund, Inc.; information concerning childhood early intervention programs in Massachusetts; an article on development risks for premature babies; information concerning immigration to Costa Rica; a worksheet showing medical care the applicant's spouse has received in prison; an order for child support payments for the applicant's spouse; 2004 tax return for the applicant and her spouse; fact sheets for stress and Hepatitis C; a "Life Events Stress Test" for the applicant's spouse; and documents concerning the applicant's spouse's union membership and healthcare benefits. The entire record has been reviewed in rendering a decision on appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
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> **(II)** Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> (v) Waiver. – The Attorney General [now Secretary, Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant was admitted to the United States in B-2 status on July 9, 2002. The standard period of authorized stay for a B-2 visa is six months. The applicant remained in the United States beyond January 8, 2003 until departing voluntarily on July 28, 2005. The applicant is now seeking admission to the United States. Therefore, the applicant was unlawfully present from January 9, 2003 until July 28, 2005, a period in excess of one year. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

In addition, the Ninth Circuit Court of Appeals in reversing the denial of suspension of deportation to the petitioner in *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted), *see also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is generally appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant's spouse suffers emotionally in the applicant's absence, but it has not been demonstrated that this emotional hardship, when combined with other hardship factors, rises to the level of extreme hardship. It is noted that the documentary evidence of the psychological detriment to the applicant's spouse consists of self-administered internet tests in which the applicant's score was determined by boxes he checked concerning life changing events, and does not reflect the insight and elaboration commensurate with an established relationship with a psychologist. Furthermore, the applicant has not submitted evidence concerning the availability and cost of medical care for her son in Costa Rica. The record

does not show that the applicant's spouse, while incarcerated, experienced extreme hardship as a consequence of separation from the applicant and their son. The applicant has also not submitted evidence concerning her financial situation in Costa Rica, or evidence concerning her spouse's employment or employment prospects in the United States. It is therefore not possible to determine if, and to what extent, the applicant's spouse will experience financial hardship if the applicant is not permitted to return to the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO concludes that the hardship described in this case is the common result of removal or inadmissibility, and it does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

The AAO acknowledges the evidence showing that the applicant's spouse is presently unable to relocate to Costa Rica but finds that the applicant has not demonstrated that he will suffer extreme hardship in the United States if the waiver application is denied.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.